# IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi for Governor Campaign, a candidate committee,

## Petitioners,

v.

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King County and Dean Logan, its Director of Records, Elections and Licensing Services; Adams County and Nancy McBroom, its Auditor: Asotin County and Elaine Johnston, its Auditor; Benton County and Bobbie Gagner, its Auditor; Chelan County and Evelyn L. Arnold, its Auditor; Clallum County and Cathleen McKeown, its Auditor; Clark County and Greg Kimsey, its Auditor; Columbia County and Sharon Richter, its Auditor; Cowlitz County and Kristina Swanson, its Auditor and Ex-Officio Supervisor of Elections, Douglas County and Thad Duvall, its Auditor; , Ferry County and Clydene Bolinger, its Auditor; Franklin County and Zona Lenhart, its Auditor; Garfield County and Donna Deal, its Auditor; Grant County and Bill Varney, its Auditor; Grays Harbor County and Vern Spatz, its Auditor; Island County and Suzanne Sinclair, its Auditor; Jefferson County and Donna Eldridge, its Auditor; Kitsap County and Karen Flynn, its Auditor; Kittitas County and Judy Pless, its Auditor; Klickitat County and Diana Housden, its Auditor; Lewis County and Gary Zandell, its Auditor; Lincoln County and Shelly Johnston, its Auditor; Mason County and Allan T. Brotche, its Auditor; Okanogan County and Peggy Robbins, its Auditor; Pacific County,

No.

# ELECTION CONTEST PETITION

**ELECTION CONTEST PETITION - 1** 

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and Pat Gardner, its Auditor; Pend Oreille 1 County and Carla M. Heckford, its Auditor: Pierce County and Pat McCarthy, its Auditor; 2 San Juan County and Si A. Stephens, its Auditor: Skagit County and Norma Hickock-Brummett, 3 its Auditor; Skamania County and Mike Garvison, its Auditor; Snohomish County and 4 Bob Terwilliger, its Auditor; Spokane County and Vicky Dalton, its Auditor; Stevens County 5 and Tim Gray, its Auditor; Thurston County and Kim Wyman, its Auditor; Wahkiakum County 6 and Diane L. Tischer, its Auditor; Walla Walla County and Karen Martin, its Auditor; Whatcom 7 County and Shirley Forslof, its Auditor; Whitman County and Eunice Coker, its Auditor, 8 and Yakima County and Corky Mattingly, its Auditor, Sam Reed, in his official capacity as 9 Secretary of State for the State of Washington: Frank Chopp, Speaker of the Washington State 10 House of Representatives, and Lieutenant Governor Brad Owen, President of the 11 Washington State Senate. 12 Respondents. 13

"[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Gold Bar Citizens for Good Government v. Whalen, 99 Wn.2d 724, 730 (1983).

"Where appropriate, [the court's powers] include the power to order a new election where no other remedy would adequately correct distortions in election results caused by fraud or neglect." *Foulkes v. Hays*, 85 Wn.2d 629, 633 (1975).

#### I. INTRODUCTION

This is an action contesting the 2004 election for the Office of Governor.

Petitioners believe that the number of illegal votes counted, and the number of valid votes improperly rejected in this election, are so great as to render the true result of the election uncertain and likely unknowable. So long as the uncertainty remains, a cloud will exist over the legitimacy of any administration taking office. Because the true results cannot be

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ascertained, a new election must occur promptly to restore the integrity of Washington's election process.

#### II. PETITIONERS -- CONTESTANTS

Petitioners are registered voters in the State of Washington and the Rossi for Governor Campaign.

# III. RESPONDENTS -- PARTIES CHARGED WITH ERROR

Respondents are the 39 counties of the State of Washington and the respective chief election officials of those counties, Sam Reed, Secretary of State for the State of Washington, and the two members of the Legislature charged with signing the Certificate of Election for the office of Governor.

# IV. SUMMARY OF CLAIMS AND RELIEF SOUGHT

This action is an election contest under RCW 29A.68, the court's plenary powers under Wash. Const. Art. 4, sec. 6, and other applicable law, and Petitioners seek a hearing under 29A.68.050. Because of the errors, omissions, misconduct, neglect, and other wrongful acts of respondent election officials, petitioners contest the election and the right of Christine Gregoire to be issued a certificate of election for the office of Governor. The affidavits and evidence to be developed in discovery in advance of the hearing will show the following:

Respondents and their agents have failed to perform their obligations under the constitutions of the State of Washington and the United States and election laws, they have made errors and been negligent, and they have committed other wrongful acts that render the true results of the election impossible to determine. Respondents counted many more votes than were cast by legitimate, registered voters.

Respondents counted votes by felons and others ineligible to vote and votes cast in the name of deceased persons. Respondents failed to secure properly certain absentee, provisional, and other ballots, and failed to implement procedures to avoid mistakes, errors, and alteration or submission of invalid votes, and as a result the improperly secured ballots were not properly counted.

King County and other Respondents failed to implement uniform procedures for the canvassing of overvotes and undervotes and some of them changed their procedures in the middle of the election and recount. King County and other respondents violated Washington law by marking on the ballots in such a manner as to obscure the original marks by the voter, making it impossible to review what the voter's intent was.

In addition, the votes of lawfully registered voters were not counted, and the failure by Respondents to count them, when presented with evidence of Respondents' errors, was arbitrary, capricious, wrongful, and a violation of their obligations under Washington's election laws. Moreover, Petitioners' rights to equal protection of the laws have been violated by the inconsistent treatment of ballots wrongly rejected by Respondents, and the lawful, valid votes of electors, including the petitioners, have been diluted by the counting of invalid or illegal votes.

As a result of Respondents' actions, it is impossible to determine which candidate received the greatest number of legitimate, valid, legal votes. Pursuant to the provisions of RCW 29A.68, the court's plenary powers, and other applicable law the court should declare the election void, set it aside, order that any certification of the results of the election and any certificate of election issued as a result of the election are also void, and order that a new election be conducted as soon as practicable.

The court should also order the implementation of procedures to prevent the recurrence of the errors, mistakes, neglect, and wrongful acts that plagued this contested election.

## V. JURISDICTION AND VENUE

This court has jurisdiction to resolve this election contest pursuant to RCW 29A.68.011 *et seq.*, and the court's plenary powers. *See Foulkes v. Hays*, 85 Wn.2d 629,

633 (1975) (court has power under plenary power and election contest statute to resolve election contest, nullify election, and order a new election); *Becker v. County of Pierce*, 126 Wn.2d 11, 20-22 (1995) (affirming resolution of election contest in race for state auditor, a state executive office under Wash. Const. Art. 3, sec. 1).

Pursuant to RCW 36.01.050, 4.12.050, 4.12.025, and 29A.68.011, venue in this court is proper. Venue is proper because the Respondents and parties charged with error include Chelan County and its auditor; because one of the Petitioners, Thomas L. Canterbury, is a resident of Chelan County who suffered harm in Chelan County by the actions of Chelan County and its auditor in Chelan County; and Chelan County is adjacent to several other Respondent Counties charged with wrongdoing and neglect.

## VI. GROUNDS AND CAUSES FOR THE CONTEST

- A. As set forth and supported in the Affidavit of Chris Vance submitted herewith and additional affidavits of electors to be filed, as well as in additional evidence to be developed in discovery and presented at a hearing pursuant to RCW 29A.68.050, respondents have committed errors, omissions, mistakes, neglect, and other wrongful acts, including but not limited to the following:
  - 1. Employing procedures that resulted in the counting of votes far in excess of the number of lawfully registered electors who participated in the election. Specifically, based on information currently available, it appears there are thousands more votes than individuals credited with voting in King County, Pierce County, Snohomish County, Kitsap County, Clark County, Clallam County, Douglas County, Island County, Jefferson County, Lewis County, Lincoln County, Pend Oreille County, Skamania County, Stevens County, and Whatcom County.
  - 2. Counting provisional ballots in violation of the law by failing to first investigate the provisional ballot to verify that the person was a lawfully registered voter and had not already voted in the election.

- 3. Counting the votes of convicted felons who have not had their civil rights restored.
- 4. Counting invalid votes submitted in the name of persons who died before the election.
- 5. Counting ballots submitted by persons other than the registered voter in whose name the ballots were submitted – including, according to media reports, at least two absentee ballots counted in Lewis County.
- 6. Failing to ensure that military overseas and other absentee voters received absentee ballots in a timely manner.
- Violating Petitioners' rights to equal protection of the laws by only correcting in some counties, but not others, errors made by election workers and discovered after the initial certification. The inconsistent treatment includes King County's selective correction of errors regarding ballots for which election officials had apparently made mistakes in verifying signatures and its refusal to correct additional signature verification errors when presented with declarations from voters whose ballots had been mistakenly rejected. As a result, ballots within King County were treated unequally. Also, selected ballots in King County were treated differently than ballots in other counties. Apparently based on the instructions of the Secretary of State, after King County selectively corrected certain errors the following additional counties violated Petitioners' rights to equal protection of the laws by refusing to correct errors when presented evidence from lawfully registered voters of the respective county's mistakes:

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Asotin Clallum Douglas Grays Harbor Kitsap	Benton Clark Franklin Island Kittitas	Chelan Cowlitz Grant Jefferson Klickitat
Lewis	Mason	Okanogan

Pacific	Pend Oreille	Pierce
Skamania	Snohomish	Spokane
Thurston	Walla Walla	Whatcom
Yakima		

- 8. Violating Petitioners' rights to equal protection of the laws by allowing third parties to solicit, collect, and present for consideration revised election documents (ballot envelope signatures or registration signatures) in an effort to correct mismatched signatures and by doing so only in some counties but not in others.
- 9. Violating Petitioners' rights to equal protection of the laws by failing to establish and follow uniform standards regarding the treatment of ballots containing marks in addition to a single, completely filled-in oval for one candidate ("overvotes") and containing a less than completely filled-in oval for a candidate ("undervotes"), with the result that similar ballots reviewed at different times or by different individuals were treated differently.
- 10. Violating Petitioners' rights to equal protection of the laws by, *inter alia*, failing to provide consistent standards for the treatment of overvotes and undervotes and by King County's changing, several times during the course of the canvass of votes and the recounts, the standards by which election officials decided how and whether to count ballots containing overvotes or undervotes and ballots containing efforts by voters to write in the names of one of the candidates on the ballot.
- 11. Violating the provisions of Washington election law regarding the duplication and enhancement of ballots by marking on ballots in ways that permanently obscured the original marks by the voters making it impossible to now discern voters' intent.
- B. As a result of Respondents' errors, omissions, misconduct, neglect, and other wrongful acts, Respondents counted more invalid, illegal, and/or otherwise wrongful

votes than the number of votes certified by the Secretary of State as separating the candidates. Specifically,

- 1. Many, potentially thousands, more votes were counted than were cast by lawfully registered voters;
- 2. Many provisional ballots were counted without any determination being made that the voter was entitled to vote or had not already voted;
- 3. Convicted felons who have not had their civil rights restored voted and had their votes counted;
  - 4. Invalid votes were counted in the name of deceased persons:
- 5. Absentee ballots signed by individuals other than the registered voter to whom they were sent were counted;
- 6. Invalid votes that were submitted by people who submitted more than one ballot were improperly counted;
- 7. There is apparently no way to retrieve any such ballots described above from the pool of ballots counted so as to determine the correct number of valid votes for each candidate such that the true results of the election are uncertain and unknowable;
- 8. Military overseas and other absentee voters may have been disenfranchised by administrative error;
- 9. Illegitimate, invalid and/or illegal votes were cast, and in such number that if given to Ms. Gregoire, will, if taken from her, reduce the number of her legal votes below the number of legal votes given to Mr. Rossi (RCW 29A.68.090); and
- 10. It appears that a sufficient number of illegitimate, invalid and/or illegal votes has been given to Ms. Gregoire that, if taken from her, would reduce the number of her legal votes below the number of votes given to Mr. Rossi, after

deducting therefrom the illegal votes that may be shown to have been given to him (RCW 29A.68.110).

- C. As a result of Respondents' errors, omissions, misconduct, neglect and other wrongful acts, Respondents failed to count more lawful votes for Candidate Rossi than the number of votes separating the candidates. The number of individuals who state that they voted for Mr. Rossi but their ballots were wrongfully rejected by Respondents exceeds the number of votes certified by the Secretary of State as separating the two candidates by more than double.
- D. As a result of Respondents' actions and the inconsistent treatment of ballots wrongly rejected by election workers, valid ballots from lawfully registered voters were rejected and not counted in select counties. Thus, an elector had a greater chance of having his or her ballot counted in some counties than in others, which constitutes a violation of Petitioners' rights to equal protection of the law.
- E. As a result of Respondents' actions, confidential information regarding provisional ballot voters was disclosed and third parties were allowed to collect and present revised election or registration documents in some but not all counties. Thus, an elector in some counties had a greater chance of having his or her ballot counted in some counties than in others, which constitutes a violation of Petitioners' rights to equal protection of the law.
- F. The actions and omissions described in Sections V(A) through (E) herein constitute neglect of duty, errors, and misconduct on the part of Respondent election officers, in violation of Washington's election laws, and as a result of these errors and omissions, an error has occurred in the Secretary of State's certification of the election returns and is about to occur in the issuance of a certificate of election to Ms. Gregoire.
- G. In addition, as a result of the actions and omissions of Respondents, Washington voters have been deprived of a free and fair election:

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- 1. Petitioners have been deprived of the equal protection of the laws guaranteed by the United States and Washington State Constitutions;
- 2. The valid votes of Petitioners were either not counted or diluted by illegitimate, invalid, and/or illegal votes; and
- 3. It is impossible to determine which gubernatorial candidate received the greatest number of legitimate votes.

## VII. RELIEF REQUESTED

For the foregoing reasons, Petitioners respectfully ask the court to expedite the hearing of this case and issue an order:

- (1) declaring the election null and void;
- (2) setting the election aside;
- (3) declaring that any certification of the results of the election and any certificate of election issued as a result of the election are also void;
  - (4) directing that a new election be conducted as soon as practicable;
  - (5) granting any other relief the court deems equitable and just.

DATED this Hu day of January, 2005.

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